

AMENDED IN SENATE JUNE 16, 2014

AMENDED IN ASSEMBLY MAY 12, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2397

Introduced by Assembly Member Frazier

February 21, 2014

An act to amend Section 977 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2397, as amended, Frazier. Criminal procedure: defendant's appearance by video.

Existing law generally requires a defendant in a criminal trial in which a felony is charged to be present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. Existing law requires the accused to be personally present at all other proceedings unless he or she executes a written waiver of his or her right to be personally present. Existing law authorizes a court to permit the initial court appearance and arraignment of a defendant held in any state, county, or local facility within the county on felony or misdemeanor charges, except for those defendants who were indicted by a grand jury, to be conducted by 2-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. Existing law requires the defendant to execute a written waiver if the defendant decides not to exercise the right to be physically present in the courtroom to make his or her plea.

Existing law requires the attorney of a defendant so held to be present in court during the hearing for an initial court appearance and arraignment if the attorney is not present with the defendant. Existing law, notwithstanding this provision, requires the attorney to be present with the defendant in any county exceeding 4,000,000 persons in population.

This bill would delete the requirement that the attorney be present in any county exceeding 4,000,000 persons in population. *The bill would authorize a defendant who does not wish to be personally present for noncritical portions of the trial when no testimonial evidence is taken to submit an oral waiver in open court prior to the proceeding, or submit a written request to the court and would allow the court to grant the request in its discretion.* The bill would allow a court, *when a defendant has waived the right to be personally present*, to require the appearance of a defendant held in any state, county, or local facility within the county on felony or misdemeanor charges to be conducted by 2-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom for noncritical portions of the trial. ~~The bill would authorize a defendant who does not wish to be personally present for noncritical portions of trial, as defined, to submit an oral waiver in open court prior to the proceeding, or submit a written request to the court and would allow the court to grant the request in its discretion. The bill would, if the defendant is represented by counsel, provide that the attorney shall not be required~~ *If the defendant is represented by counsel, the bill would not require the attorney* to be personally present with the defendant for noncritical portions of the trial, if the audiovideo conferencing system or other technology allows for private communication between the defendant and the attorney. The bill would state that it does not expand or limit the right of a defendant to be personally present with his or her counsel at a particular proceeding as required by the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 977 of the Penal Code is amended to
 2 read:

1 977. (a) (1) In all cases in which the accused is charged with
2 a misdemeanor only, he or she may appear by counsel only, except
3 as provided in paragraphs (2) and (3). If the accused agrees, the
4 initial court appearance, arraignment, and plea may be by video,
5 as provided by subdivision (c).

6 (2) If the accused is charged with a misdemeanor offense
7 involving domestic violence, as defined in Section 6211 of the
8 Family Code, or a misdemeanor violation of Section 273.6, the
9 accused shall be present for arraignment and sentencing, and at
10 any time during the proceedings when ordered by the court for the
11 purpose of being informed of the conditions of a protective order
12 issued pursuant to Section 136.2.

13 (3) If the accused is charged with a misdemeanor offense
14 involving driving under the influence, in an appropriate case, the
15 court may order a defendant to be present for arraignment, at the
16 time of plea, or at sentencing. For purposes of this paragraph, a
17 misdemeanor offense involving driving under the influence shall
18 include a misdemeanor violation of any of the following:

19 (A) Subdivision (b) of Section 191.5.

20 (B) Section 23103 as specified in Section 23103.5 of the Vehicle
21 Code.

22 (C) Section 23152 of the Vehicle Code.

23 (D) Section 23153 of the Vehicle Code.

24 (b) (1) Except as provided in subdivision (c), in all cases in
25 which a felony is charged, the accused shall be personally present
26 at the arraignment, at the time of plea, during the preliminary
27 hearing, during those portions of the trial when evidence is taken
28 before the trier of fact, and at the time of the imposition of
29 sentence. The accused shall be personally present at all other
30 proceedings unless he or she shall, with leave of court, execute in
31 open court, a written waiver of his or her right to be personally
32 present, as provided by paragraph (2). If the accused agrees, the
33 initial court appearance, arraignment, and plea may be by video,
34 as provided by subdivision (c).

35 (2) The accused may execute a written waiver of his or her right
36 to be personally present, approved by his or her counsel, and the
37 waiver shall be filed with the court. However, the court may
38 specifically direct the defendant to be personally present at any
39 particular proceeding or portion thereof. The waiver shall be
40 substantially in the following form:

1 “Waiver of Defendant’s Personal Presence”

2
3 “The undersigned defendant, having been advised of his or her
4 right to be present at all stages of the proceedings, including, but
5 not limited to, presentation of and arguments on questions of fact
6 and law, and to be confronted by and cross-examine all witnesses,
7 hereby waives the right to be present at the hearing of any motion
8 or other proceeding in this cause. The undersigned defendant
9 hereby requests the court to proceed during every absence of the
10 defendant that the court may permit pursuant to this waiver, and
11 hereby agrees that his or her interest is represented at all times by
12 the presence of his or her attorney the same as if the defendant
13 were personally present in court, and further agrees that notice to
14 his or her attorney that his or her presence in court on a particular
15 day at a particular time is required is notice to the defendant of the
16 requirement of his or her appearance at that time and place.”

17
18 (c) (1) The court may permit the initial court appearance and
19 arraignment of defendants held in any state, county, or local facility
20 within the county on felony or misdemeanor charges, except for
21 those defendants who were indicted by a grand jury, to be
22 conducted by two-way electronic audiovideo communication
23 between the defendant and the courtroom in lieu of the physical
24 presence of the defendant in the courtroom. If the defendant is
25 represented by counsel, the attorney shall be present with the
26 defendant at the initial court appearance and arraignment, and may
27 enter a plea during the arraignment. However, if the defendant is
28 represented by counsel at an arraignment on an information in a
29 felony case, and if the defendant does not plead guilty or nolo
30 contendere to any charge, the attorney shall be present with the
31 defendant or if the attorney is not present with the defendant, the
32 attorney shall be present in court during the hearing. The defendant
33 shall have the right to make his or her plea while physically present
34 in the courtroom if he or she so requests. If the defendant decides
35 not to exercise the right to be physically present in the courtroom,
36 he or she shall execute a written waiver of that right. A judge may
37 order a defendant’s personal appearance in court for the initial
38 court appearance and arraignment. In a misdemeanor case, a judge
39 may, pursuant to this subdivision, accept a plea of guilty or no
40 contest from a defendant who is not physically in the courtroom.

1 In a felony case, a judge may, pursuant to this subdivision, accept
2 a plea of guilty or no contest from a defendant who is not
3 physically in the courtroom if the parties stipulate thereto.

4 (2) (A) *A defendant who does not wish to be personally present*
5 *for noncritical portions of the trial when no testimonial evidence*
6 *is taken may make an oral waiver in open court prior to the*
7 *proceeding or may submit a written request to the court, which*
8 *the court may grant in its discretion. The court may, when a*
9 *defendant has waived the right to be personally present, require*
10 *a defendant held in any state, county, or local facility within the*
11 *county on felony or misdemeanor charges to be present for*
12 *noncritical portions of the trial when no testimonial evidence is*
13 *taken, including, but not limited to, confirmation of the preliminary*
14 *hearing, status conferences, trial readiness conferences, discovery*
15 *motions, receipt of records, the setting of the trial date, a motion*
16 *to vacate the trial date, and motions in limine, by two-way*
17 *electronic audiovideo communication between the defendant and*
18 *the courtroom in lieu of the physical presence of the defendant in*
19 *the courtroom. A defendant who does not wish to be personally*
20 *present for noncritical portions of trial may make an oral waiver*
21 *in open court prior to the proceeding or may submit a written*
22 *request to the court, which the court may grant in its discretion. If*
23 *the defendant is represented by counsel, the attorney shall not be*
24 *required to be personally present with the defendant for noncritical*
25 *portions of the trial, if the audiovideo conferencing system or other*
26 *technology allows for private communication between the*
27 *defendant and the attorney prior to and during the noncritical*
28 *portion of trial. Any private communication shall be confidential*
29 *and privileged pursuant to Section 952 of the Evidence Code.*

30 (B) This paragraph does not expand or limit the right of a
31 defendant to be personally present with his or her counsel at a
32 particular proceeding as required by Section 15 of Article 1 of the
33 California Constitution.

34 (C) ~~For purposes of this subdivision, noncritical portions of the~~
35 ~~trial shall only include appearances in which testimonial evidence~~
36 ~~is not taken.~~